



# ***Facts About...***

## **Animal Feeding Operations (AFOs) Permitting Process Frequently Asked Questions**

---

**The Maryland Department of the Environment (the “Department”) General Discharge Permit for AFOs (GD Permit) was renewed/reissued on December 1, 2014 and will expire on November 30, 2019. All Concentrated Animal Feeding Operations (CAFOs) and Maryland Animal Feeding Operations (MAFOs) must apply for coverage under the GD Permit, even those that are registered under the prior GD Permit (09AF). Certain AFOs are required by State and federal regulations to obtain coverage under this permit. This fact sheet answers questions about CAFOs and MAFOs and how they are regulated by the Department.**

### **What is an AFO?**

An AFO is an Animal Feeding Operation. To be considered an AFO, the operation must confine its livestock for at least 45 days per year and not grow crops or forage where the animals are confined.

### **When does an AFO become a CAFO or a MAFO?**

CAFOs or MAFOs are AFOs with at least 37,500 or more chickens per flock with dry manure handling; 25,000 or more laying hens with dry manure handling; 200 or more dairy cattle; 300 or more cattle (including heifers); 750 or more swine weighing greater than 55 pounds each; or 3,000 or more swine weighing less than 55 pounds each. The regulations also include limits on the numbers of horses, veal cattle, sheep and lambs, ducks and turkeys that constitute a CAFO or MAFO.

The lot/facility (farm) is a CAFO if it is designed, constructed, operated or maintained such that a discharge of manure, litter or process wastewater could or does occur to surface waters of the State during wet weather events. The presence of a man-made ditch, flushing system, or other similar man-made device (e.g. pipes, ditches, swales, etc.) to remove water from the production area indicate that it proposes to discharge during wet weather events.

A MAFO is an AFO that is designed, constructed, operated or maintained such that a discharge of manure, litter or process wastewater will not occur to surface waters of the State during wet weather events. A MAFO does NOT discharge contaminated storm water to surface waters of the State. A large AFO that does not discharge to surface waters of the State, but discharges to ground waters of the State, is considered a MAFO.



## **Are AFOs other than CAFOs and MAFOs Regulated?**

All medium chicken (other than laying hens) AFOs that are not designed, constructed, operated and maintained such that a discharge could occur, not categorized as a CAFO or MAFO and with a total house capacity of between 75,000 and 100,000 square feet are required to submit a Certification of Conformance (COC) prior to operating the AFO. If the AFO does not submit a COC immediately, it is automatically designated as a MAFO by the Department and must obtain coverage under the GD Permit as a MAFO. COC holders are not required to obtain coverage under the GD Permit, but must have a current plan (a nutrient management plan (NMP) and soil conservation and water quality plan (CP) or a Comprehensive Nutrient Management Plan (CNMP) at the operation for inspection by the Department.

## **Why do AFOs need discharge permits?**

Discharge permits specify the minimum measures or best management practices that are needed to protect water quality and prevent the violation of water quality standards. The GD Permit includes standardized conditions that have been established to protect surface and ground water from the impacts of discharges from CAFOs and MAFOs. AFOs have the potential to discharge manure, litter or process wastewater from production areas that contains nitrogen and phosphorus. Excessive levels of nitrogen and phosphorus that enter the waters of the State are the main cause of algae blooms, which deplete dissolved oxygen, impede the growth of aquatic grasses and cause fish kills. The GD Permit allows an AFO to discharge to surface and ground water of the State under certain circumstances. Without the GD Permit, these discharges are illegal.

## **What are the environmental issues associated with CAFOs and MAFOs?**

AFOs can pose risks to water quality and public health due to the amount of animal manure and wastewater they generate. Manure, litter and process wastewater from AFOs have the potential to contribute pollutants to the environment including nutrients such as nitrogen and phosphorous, sediment, pathogens, heavy metals, hormones, and antibiotics. If designed, constructed, operated, and maintained properly and in accordance with regulations, AFOs can reduce the potential for environmental harm.

## **Why is Maryland focusing on AFOs? What about larger, more important sources such as sewage treatment plants and industries?**

To restore the Chesapeake Bay and its tributaries, Maryland must control all significant sources of nitrogen and phosphorus that are polluting the Chesapeake Bay. Maryland has been aggressively working to reduce pollution from sewage treatment plants, industries, urban and suburban stormwater runoff, and septic systems and control nitrogen emissions from power plants, cars and trucks. The agriculture industry is similarly being addressed, with the largest animal producers being one of the major sources of nitrogen and phosphorus from agriculture.

## **Who determines whether or not my operation is a CAFO?**

The federal and State regulations require the owner or operator of an AFO to determine whether or not their operation is a CAFO and is subject to this regulation. During the processing of the permit application, the Department will advise the owner/operator whether their determination should be modified.



## **If I am a CAFO or MAFO, how do I apply for coverage under the GD Permit ?**

Obtain and complete a NOI form and the required plan (a NMP and a soil conservation and water quality plan (CP); or a CNMP in lieu of the NMP and CP) for your operation.

**To request a NOI Form, call (410) 537-3314 or download the form from our Web site: [www.mde.maryland.gov](http://www.mde.maryland.gov) (search for AFO).**

### **2) Mail the completed forms to:**

Maryland Department of the Environment  
Land Management Administration  
1800 Washington Blvd, Ste. 610  
Baltimore MD 21230

## **What is a CNMP?**

A CNMP is a soil conservation and water quality plan (conservation plan) combined with a NMP. It is a specific plan that is developed to ensure that producers make the best use of manure and poultry litter while also protecting water quality.

A CNMP guides the management of the production, handling, storage and/or treatment of all nutrients at the operation, from feed to manure. The CNMP is individually designed, considering the unique land, labor and equipment resources of your operation. The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) or a NRCS certified technical service provider (TSP) works with you to develop a CNMP that best meets your management objectives and environmental concerns, while meeting NRCS technical standards. CNMPs include a description of manure storage structures, handling methods, application rates, erosion control practices, guidance on when and where to apply manure and litter, and a record-keeping tool.

A CNMP is the starting point to minimizing any potential discharge to waters of the State of nutrients or other pollutants from the production area and the land application area.

## **What do I do if I don't have a required plan?**

CAFOs and MAFOs have the option to submit to the Department either a CNMP or a combination of a NMP and CP (the required plan). The Department realizes that many AFOs do not have CNMPs and that there are not many TSPs certified by the NRCS to develop CNMPs. If you are an existing CAFO or MAFO, it is still important that you submit your NOI for AFO (CAFO or MAFO) coverage to the Department as early as possible, especially if you are building a new AFO or expanding an existing, registered operation. If you do not have a required plan, submit your NOI without the plan and the Department will contact you. In the meantime, please contact the Soil Conservation District office about developing a plan.



### **How do I obtain a CNMP?**

Contact the NRCS. They will help you design a CNMP specifically for your operation. Assistance to develop your CNMP may also be available from certified Technical Service Providers (TSPs). A list of TSPs certified to write CNMPs in Maryland can be found by searching the NRCS website, [www.nrcs.usda.gov](http://www.nrcs.usda.gov), and clicking “Technical Assistance”. You may qualify for financial assistance for CNMP development under the NRCS Environmental Quality Incentives Program (EQIP). For more information on how to have a CNMP developed for your operation, contact your local USDA Field Office Service Center <http://www.md.nrcs.usda.gov/contact/directory>.

### **How do I obtain a NMP and CP?**

Contact your Soil Conservation District office for assistance with obtaining a NMP and CP.

### **I have two poultry operations. Do I need to submit an NOI and required plan for each?**

From the regulations: “Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals or house capacity at an operation, if they adjoin each other or if they use a common area or system for the disposal of waste.”

- If the two operations adjoin each other, they are considered a single operation.
- If the two operations do not adjoin each other, and they take their manure/litter to a farm that they do not control, then they are separate operations and must send in an NOI and required plan for each operation.
- If two non-adjointing operations take their manure/litter to farms owned or leased by the same owner/operator as the animal growing operations, then these two non-adjointing operations can be considered a single operation and can submit a single NOI and required plan. If a single required plan is used, then each operation must have a separate section in the plan to make it clear for the Department to review.
- The final decision is made by the Department.

### **How long will it take for the Department to process my application(permit turnaround time)?**

Once your application is complete (contains the NOI and current required plans that meet the Department’s requirements), the published permit turnaround times to process the application are:

Type	Permit Turnaround Time *
Previously registered AFOs	3 years
New AFOs	160 calendar days

\* This includes the thirty calendar day public notification period.

***New AFO construction and expansions of existing, registered AFOs are given a top priority for the Department’s review. Processing time may be reduced provided that the NOI and required plans are complete and meet the Department’s requirements.***



## **Do I have to do anything during the permitting process?**

Staff from the Department's AFO Division will contact you to verify the information you submitted. They may ask to visit your operation and meet with you. Once your application is considered complete and meets the Department's requirements, the Department will publish an "opportunity for public comment" on the Department's preliminary approval of your NOI and required plans. The notice will appear on the Department's AFO website. Your NOI and the required plans will be made available to the public for written comments for thirty (30) calendar days at the Department's main location in Baltimore and on the Department's website ([www.mde.maryland.gov](http://www.mde.maryland.gov)) .

### **CAFOs:**

Besides an opportunity to submit written comments, the public can request a public hearing in writing during the first twenty (20) calendar days of the public comment period. If there are no requests for a public hearing, you will receive a letter stating that your CAFO is registered/covered under the GD Permit.

If a public hearing is requested, the Department will schedule it at a location in your county. The Department will address any comments presented during the comment period in a "response to comments" document. If the Department receives comments adverse to its preliminary approval of the NOI and required plan, the Department will make a determination regarding the final approval of the NOI and required plan. You will then receive a letter addressing the Department's determination regarding your coverage under the GD Permit.

### **MAFOs:**

Although there is no requirement for requesting a public hearing for MAFOs, the regulations require that the NOI and required plan be made available for a thirty (30) calendar day public review and comment period. If the Department receives comments adverse to its preliminary approval of the NOI and required plan, the Department will make a determination regarding the final approval of the NOI and required plan. You will then receive a letter addressing the Department's determination regarding your coverage under the GD Permit.

## **Do I have to pay a fee?**

The regulations establish a CAFO Annual Permit fee for different size categories. Currently these fees have been waived by the Department until further notice. There are no fees for MAFO coverage under the GD Permit.

## **If this is a "general permit" how can it apply to a particular operation and why is there a public comment period?**

A general permit is a permit that applies the same conditions to all operations registered under it. As required by the Department's regulations, the permit goes through a public participation period and is issued for a period of five years. Applicants for coverage under the permit submit a NOI and the required plans, and any applicable fees, and are registered/covered under that permit. This GD Permit is unique as it has the elements of a general permit with respect to the terms and conditions of the permit, and the elements of an individual permit with respect to public participation and certain sections of the required plans become terms



and conditions of the permit. These terms and conditions are as enforceable as the general conditions in the permit itself. The inclusion of many of the conditions in the required plans in the permit make each registration specific to that operation. Therefore, no two AFO registrations are exactly the same.

**When my required plan (CNMP, NMP or CP) is updated, do I have to send the update to the Department?**

You must notify the Department in writing when you modify your operation. This may be done by sending the Department an updated plan, a letter outlining the modification, or a new NOI. The extent of the modification will determine the means of notification in accordance with the permit. It is important for the Department to be made aware of any changes to your operation such as increasing or decreasing the number of animals, building new structures, or adding fields that receive manure or litter. If you have applied for the GD Permit, this is required whether or not you have been registered under the GD Permit.

**If I close my AFO, do I have to notify the Department?**

Yes. When you cease operating as an AFO, the Department must be notified if you have sent us an NOI or have been registered under the GD Permit. Please send us the date that the AFO was closed so that we can cancel the registration and relinquish you of its obligations.

**If I sell my AFO, do I have to notify the Department?**

Yes. When you sell your operation, the Department must be notified of the date that you sell it and to whom you sold it. Otherwise, you may still be held responsible for any problems found at the operation. The registration does not automatically transfer to the new owner. If you sell the operation and the Department is not notified, then the new owner/operator is operating without a permit and will be subject to enforcement action.

**Can I transfer my AFO GD Permit registration to the new owner?**

Yes. Part VII Q of the permit allows transfers to another person if:

- the permit under which your operation is registered is not expired;
- the current registrant notifies the Department in writing of the proposed transfer;
- a written agreement is submitted to the Department that is signed by both parties indicating the specific date of the proposed transfer of permit coverage which acknowledges the responsibilities and liabilities of the current and new permittees for compliance with the terms and conditions of the permit;
- the new permittee signs the existing NMP and conservation plan or the existing CNMP, and sends the cover page to the Department; and
- Neither the current permittee nor the new permittee receives notification from the Department, within 30 days of receipt of these items, of its intention to revoke the existing registration or modify the terms of the exiting approved plans.

If the new permittee needs a new required plan, the permittee must submit a new NOI with the appropriate plan(s).





## **I've heard a lot about "new sources". What are they?**

EPA's/the Department's requirements are different for "existing sources", or operations that are built by a certain date and "new sources", or operations that are constructed after that date. New sources have the ability to include the latest pollution prevention practices in their design more economically than existing sources, which would have to retrofit their older operations with these practices. AFO Division personnel will help you determine whether you are a new source.

To be a new source, you would have to have constructed your operation (a chicken house, manure storage shed or complete operation) after April, 2003. The operation would also have to totally replace the existing source of the discharge or be "substantially independent" of the existing operation. For example, if you are just replacing one of several chicken houses on the same foundation with a poultry house of the same size as the old one, it may not be a new source. The Department will help you determine whether your operation is a new source.

For EPA CAFOs, the new source performance standard is zero discharge of manure, litter, or process wastewater from the production area (animal confinement, manure storage and feed storage areas) into surface waters of the State. A poultry stakeholder group that included Mid-Atlantic Farm Credit, Delmarva Poultry Industry, Inc., USDA-Natural Resources Conservation Service, Soil Conservation Districts, poultry integrators, Maryland Department of Agriculture, the Department and others developed a list of best management practices for poultry new sources (New Source Design Criteria) that could be included in an operation's required plans by the planner to assure that the performance standard is met for new sources.

The primary requirement is that any new poultry structures (houses, manure sheds, composters, feed bins, etc.) be located at least 100 feet from waters of the State. "Waters of the State" include the Chesapeake Bay and its tributaries, and all ponds, lake, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems, and the flood plain of free-flowing waters on the basis of the 100-year flood frequency.

To receive loans to construct a new source, Farm Credit requires that you be permitted by the Department, so submitting your NOI and the required plan to the Department is necessary. Have Farm Credit contact the Department to confirm that your application has been received. The Department will notify the Farm Credit of the receipt of your application, if requested.

## **I am planning to start a new poultry operation. What MDE permits do I need in addition to the General Discharge Permit for AFOs?**

Planning for new poultry facilities should begin at the local level. The Department has provided regulatory guidance materials, including design templates and permit guides, to district and county personnel. These materials provide contact information for Department personnel who are available to answer questions. Sites with wetlands, streams, or other sensitive resources should contact the Department's Wetlands and Waterways program early in the planning process to arrange a pre-application site visit.

### **Planning and Construction**

Under State law, the Department considers poultry houses to be Animal Feeding Operations (AFOs). Anyone planning the construction of facilities for a new AFO must comply with applicable State and Federal regulatory requirements.



Construction of these facilities typically involves grading and earth disturbances. When this construction will disturb over 5000 square feet of soil, the County will require soil erosion and sediment control plan approvals from the County Soil Conservation Districts, in accordance with Maryland regulations, as well as stormwater management plan approval from the local County approving authority.

Any construction that involves the disturbance of one or more acres of land also requires the submission to the Department of a federally-mandated Notice of Intent (NOI) application for coverage under the **General Discharge Permit for Stormwater Associated with Construction Activity** (“Construction Activity Permit”). This permit is required to ensure that sediment in stormwater discharges from grading and construction activity is minimized. The Construction Activity Permit requires that the permittee obtain approval from the above authorities for the erosion and sediment control plan and stormwater management plan. Although disturbance associated with the construction of agriculture structures may be exempted, the amount of disturbance (one or more acres) associated with the construction of new poultry houses often requires a Construction Activity Permit thus also requiring an approved soil erosion and sediment control plan.

To simplify compliance with the State’s stormwater management requirements, which is a component of the NOI approval process, the Department has worked closely with local stormwater approving authorities and Soil Conservation District personnel to develop standard stormwater design templates for poultry houses that District personnel or local engineers can use to develop compliant plans. These templates are on the Department’s website.

In addition, site planning for any new construction should consider potential impacts to wetlands and waterways. Tidal wetlands, nontidal wetlands, the nontidal wetland 25-foot buffer and waterways, including the 100-year non-tidal floodplain, are regulated by the Department and the US Army Corp of Engineers, and both agencies require impacts to these resources to be identified prior to construction activity, avoided and minimized to the greatest extent possible, and direct impacts to be mitigated. This regulatory process would typically require input from a site design engineer experienced in the wetland permitting process. Permit approvals for projects that have significant impacts to wetlands and waterways typically take 12 months and require public notice and hearing opportunities as well as a plan to replace any lost wetlands. Minor projects that propose less than 5,000 square feet of impact to nontidal wetlands do not require public notice from MDE but may require this from the U.S. Army Corps of Engineers. This typically takes less time than permit authorizations. In general, any proposed poultry operations should avoid sensitive areas and the Department’s guidance recommends best management practices and buffers from waters of the State to ensure that these impacts are minimized.

If water supply requirements for the new poultry houses are at least 10,000 gallons per day, a **Water Appropriations Permit** is needed in order to assure that the groundwater aquifer has adequate yield for the use in the area of the project.

### **Who do I contact for more information?**

You can contact Gary Kelman, AFO Division Chief at 410-537-4423 or [gary.kelman@maryland.gov](mailto:gary.kelman@maryland.gov).

For permits required by the Department, other than the **General Permit for Animal Feeding Operations**, you can contact:

#### **MDE-WMA General Permit for Construction Activity:**

Jesse Salter, Technical Services and Permitting Section, Compliance Program, [mde.constructionswnoi@maryland.gov](mailto:mde.constructionswnoi@maryland.gov), (410) 537-3019

#### **MDE Wetlands and Waterways Program to determine extent of wetlands and permission to build in waterways**





Steve Dawson, Nontidal Wetlands Division  
steve.dawson@maryland.gov, 410-713-3685;

Bill Seiger, Waterway Construction Division,  
william.seiger@maryland.gov, 410-537-3821;

WMA Compliance Program

Paul Ferreri, acting Division Chief,  
paul.ferreri@maryland.gov, 410- 901-4020; and  
Otto Schlicht, District Manager  
[otto.schlicht@maryland.gov](mailto:otto.schlicht@maryland.gov), 410-901-4023

WMA Water Supply Program for **Water Appropriations Permit**

[water.supply@maryland.gov](mailto:water.supply@maryland.gov), 410-537-3714

